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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,480	02/27/2002	Kazuyuki Miya	L9289.02130	3434
24257 7590 11/16/2007 STEVENS DAVIS MILLER & MOSHER, LLP 1615 L STREET, NW SUITE 850 WASHINGTON, DC 20036			EXAMINER ISMAIL, SHAWKI SAIF	
			ART UNIT 2155	PAPER NUMBER
			MAIL DATE 11/16/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/069,480

Applicant(s)

MIYA ET AL.

Examiner

Shawki S. Ismail

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 38-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **RESPONSE TO AMENDMENT**

1. This communication is responsive to the amendment received on August 20, 2007.

Claims 26-37 have been cancelled.

Claims 38-50 are newly added and presented for examination.

### **The New Grounds of Rejection**

2. Applicant's amendment and arguments received on August 20, 2007 have been fully considered, however they are deemed to be moot in view of the new grounds of rejection.

### **Claim Rejections - 35 USC §102**

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 38-39, 42, 43-47, and 50, are rejected under 35 U.S.C. 102(e) as being anticipated by **Mohebbi U.S. Patent 6,889,046**.

Mohebbi teaches a mobile station that is capable of receiving a downlink signal from each of a plurality of base stations and transmitting an uplink signal to the plurality of the base stations through a wireless channel. The mobile station produces a measure of signal quality of the downlink signals from the plurality of base stations to the mobile

station and selects a base station from which the downlink signal shows a preferred signal quality. The mobile station transmits an uplink signal indicating the selected base station among the plurality of base stations for subsequent communications with the mobile station. Each base station processes the uplink signal to identify the selected base station from among the plurality of base stations (see abstract).

5. As to claim 38, Mohebbi teaches a fast packet transmission system comprising a communication terminal and a plurality of base stations, wherein: the communication terminal comprises:

- a selector that selects a base station to communicate a packet in a next transmission unit according to channel states between the terminal apparatus and base stations (refer to col. 4, lines 34-52); and

- a terminal transmitter that communicates base station selection information indicating the selected base station and transmit order information specifying a packet transmit order to the selected base station (refer to col. 4, lines 34-52), and each base station comprises:

- a determiner that determines whether to communicate the packet in the next transmission unit based on the base station selection information (refer to col. 4, lines 34-52);

- a controller that determines a transmission target packet based on the transmit order information when the base station communicates the packet in the next transmission unit (refer to col. 4, lines 34-52); and

a base station transmitter that communicates the transmission target packet determined in the controller to the communication terminal (refer to col. 4, lines 34-52).

6. As to claim 39, Mohebbi teaches the fast packet transmission system according to claim 38, wherein the terminal transmitter communicates the transmit order information to the base station only when the base station that communicates the packet is switched (refer to col. 4, lines 34-52).

7. As to claim 42, Mohebbi teaches the fast packet transmission system according to claim 38, wherein the terminal transmitter communicates the transmit order information with transmit power higher than transmit power of other information (col. 7, lines 15-24).

8. Claims 31-37 do not teach or define any new limitation above claims 26-30; therefore they are rejected for similar reasons.

*Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over

**Mohebbi U.S. Patent 6,889,046** and further in view of **Parkvall et al.**, (Jones) U.S.

**Patent No. 6,542,736.**

10. As to claims 40-41, Mohebbi teach the system as described above. Mohebbi does not explicitly teach wherein the communication terminal identifies, in the communication identifying the next packet to be communicated, the type of modulation the selected base station is to use in communicating the next packet.

Parkvall teaches data communications in a radio communications system, and more specifically, to adaptation of a radio link to a mobile terminal based on current radio communication conditions. Link adaptation may be accomplished by changing the transmit power of the base station, e.g., increasing the transmit power level for data transmitted to mobile terminals with a bad channel quality. Link adaptation may also be accomplished by changing the type of modulation and amount of channel coding applied to the data to be transmitted by the base station (see abstract, col. 2, lines 37-56).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the teaching of Parkvall into the invention of Mohebbi in order to be able attain better channel quality and to maximize the data transmission rate.

11. As to claim 43-50, they do not teach or define any new limitations above claims 38-42; therefore, they are rejected for similar reasons.

12. Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is

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respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching of all or part of the claimed invention, as well as the context.

*Response to Arguments*

13. Applicant's amendment and arguments received on January 23, 2007 have been fully considered but they are deemed to be moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

*Contact Information*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawki S Ismail whose telephone number is 571-272-3985. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shawki Ismail  
Patent Examiner  
November 13, 2007



  
PHILIP TRAN  
PRIMARY EXAMINER